

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

LUIS ANTONIO DUTTON-MYRIE,  
Defendant.

CASE NO. 3:CR-07-445

(JUDGE CAPUTO)

**MEMORANDUM ORDER**

Presently before the Court is Defendant Luis Antonio Dutton-Myrie's motion for notice of evidence to be admitted under Federal Rule of Evidence 404(b) and for discovery pertaining to such evidence. (Doc. 31.)

On November 7, 2007, Defendant, an illegal alien, was indicted for post-deportation reentry into the United States without the permission of the Secretary of Homeland Security in violation of 8 U.S.C. §§ 1326(a) and 1326(b)(2) and 6 U.S.C. §§ 202(3), 202(4), and 557. (Doc. 1.) Defendant filed the present motion for notice of evidence to be admitted under Federal Rule of Evidence 404(b) and for discovery pertaining to such evidence on March 24, 2008. (Doc. 31.) Defendant filed a brief in support (Doc. 36) on March 26, 2008. The Government has not filed a brief in opposition.

The Government did, however, respond by filing a Notice of Intention to Use Proof of Other Crimes as Evidence (Doc. 45) on April 9, 2008. In this notice, the Government states that it does not currently intend to use proof of other crimes as evidence; however,

it reserves the right to change its position, at which point it will provide Defendant with notice and discovery of the evidence. (Notice of Intention, Doc. 45, at 2.) The Government indicates that it does currently intend to use evidence of Defendant's prior deportation. (*Id.*) Defendant has, according to the Government, been provided with these discovery materials and has viewed his entire file. (*Id.*)

Deportation is a prior bad act under Federal Rule of Evidence 404(b) and the Government is required to provide a defendant with notice and discovery when it intends to use such evidence at trial. *See, e.g., United States v. Chavez-Garcia*, 225 F.3d 664 (9th Cir. 2000); *United States v. Nwene*, 20 F. Supp. 2d 716, 718 n.2 (D.N.J. 1998). Because the Government does not intend to admit any other 404(b) evidence except evidence of Defendant's prior deportation, has provided notice of its intent to use Defendant's prior deportation, and has made Defendant's entire file available to him, Defendant's motion for notice and discovery under Federal Rule of Evidence 404(b) is moot and will be denied.

**NOW**, this 28 day of July, 2008, **IT IS HEREBY ORDERED** that Defendant's motion for notice of evidence to be admitted under Federal Rule of Evidence 404(b) and for discovery pertaining to such evidence is **DENIED**.

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge